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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.REV.P. 688/2019**

NARENDER KUMAR Petitioner

Through: Mr Anand Sharma, Advocate.

versus

STATE & ANR Respondents

Through: Ms Kusum Dhalla, APP for State.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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14.02.2020

CRL.M.A. 3484/2020

1. For the reasons stated in the application, the delay in re-filing is condoned.
2. The application is disposed of.

CRL.M.A. 3483/2020

3. Allowed, subject to all just exceptions.

CRL.M.A. 3482/2020,

4. The petitioner has filed the present application seeking restoration of Revision Petition that was dismissed in default.
5. For the reasons stated in the application, the same is allowed.

CRL.REV.P. 688/2019

6. The petitioner has filed the present petition impugning an order dated

13.05.2019, whereby the petitioner's appeal against an order dated 04.12.2018 passed by the learned MM convicting the petitioner for an offence under Section 138 of the Negotiable Instrument Act (NI Act) was rejected.

7. The said case (CC No.8199/2017) was filed by the respondent. Three cheques issued by the petitioner for a sum of ₹50,000/- each (cheque bearing no.056466 dated 23.12.2015, cheque no.056467 dated 23.12.2015 and cheque no.056468 dated 23.12.2015 all drawn on South Indian Bank Ltd., Janakpuri Branch) were dishonoured on presentation with a remark "payment stopped by the drawer". In view of the above, summons were issued to the petitioner and, thereafter, notice under Section 251 of the CrPC was issued.

8. The petitioner contested the aforesaid case and claimed that the respondent was his employee and the cheques in question had been removed without his consent or knowledge. The respondent (complainant) was also cross-examined. The petitioner's statement was recorded under Section 313 of the CrPC and in his statement, he stated that the respondent used to look after the accounts of the partnership firm constituted by him and the respondent's wife and thus, had access to the accounts and the cheques in question.

9. The respondent was examined as CW-1. He tendered his affidavit in evidence, wherein he reiterated his complaint that he had given a loan of ₹1,50,000/- to the petitioner (the accused) and the petitioner had issued the cheques in question in discharge of the said liability. He also produced the cheque return memos, legal notice and postal receipts.

10. The court examined the petitioner's defence that the complainant was an employee with M/s S. N. Enterprises, which was claimed to be a partnership firm between the petitioner and the respondent's wife and found that there was no material to accept the same. The learned MM noted that there was no evidence that the petitioner and the respondent's wife had entered into any partnership. The petitioner had not produced any books of accounts or balance sheet of the partnership firm. Apart from his mere statement that there existed a partnership, there was no material to substantiate the same. Considering the above, learned MM found that the petitioner had been unable to rebut the presumption as statutorily imputed under Section 139 of the NI Act.

11. On the other hand, the respondent had produced sufficient evidence to establish that he was employed with All India Institute of Medical Sciences and was not an employee of the petitioner, as claimed by him.

12. In view of the above, learned MM convicted the petitioner under Section 138 of the NI Act by a judgment dated 04.02.2018. By an order dated 02.02.2019, the petitioner further sentenced to serve simple imprisonment for a term of one month and was also directed to pay a fine of ₹2,50,000/- to the complainant. It was further directed that in default of payment of fine, the petitioner would undergo further sentence of simple imprisonment of one month.

13. Aggrieved by the judgment dated 04.12.2018 and the order dated 02.02.2019, the petitioner preferred an appeal before the learned ASJ. The court examined the evidence on record and concurred with the view of the learned MM that the evidence led by the petitioner was wholly insufficient

to rebut the statutory presumption imputed by virtue of Section 139 and Section 118 of the NI Act. Accordingly, the petitioner's appeal was dismissed by an order dated 13.05.2019 (which is impugned in the present petition).

14. The learned counsel appearing for the petitioner submits that there was material on record to establish that certain invoices were in the hand of the respondent. However, he conceded that there was no material or evidence brought on record to establish the same.

15. In view of the above, this Court finds no infirmity with the impugned orders. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

FEBRUARY 14, 2020
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